

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Efrain Danilo Mendez a/k/a Efrain D. Mendez-Rivera,
Aldraily Alberto Coiscou, Fernando Molina a/k/a Jorge Luis
Flores Larios, Siryi Nayrobik Melendez, Rene Alexander
Oliva, Juan Flores Larios and Ramiro Cordova, individually
and on behalf of all others similarly situated,

Case No. 12-CV-05583 (SIL)

Plaintiffs,

- against -

U.S. Nonwovens Corp., Samuel Mehdizadeh a/k/a
Solomon Mehdizadeh, Shervin Mehdizadeh, and Rody
Mehdizadeh,

Defendants.
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**DECLARATION OF STEVEN J. MOSER
IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT**

I, Steven J. Moser, declare as follows:

1. I am the lawyer primarily responsible for prosecuting Plaintiffs' claims.
2. I make these statements based upon personal knowledge.
3. This class and collective action was filed on November 13, 2012. (See Complaint, DE 1).
4. Efrain Danilo Mendez a/k/a Efrain D. Mendez-Rivera, Aldraily Alberto Coiscou, Fernando Molina a/k/a Jorge Luis Flores Larios, Siryi Nayrobik Melendez and Rene Alexander Oliva, suing individually and on behalf of all others similarly situated, asserted five causes of action (1) unpaid overtime under the FLSA (2) unpaid overtime under the NYLL (3) untimely payment of wages under NYLL § 191, (4) spread of hours pay under the miscellaneous wage order and (5) statutory damages for failure to issue wage notices under NYLL § 195(1).

5. On August 28, 2013, the Plaintiffs moved to amend the complaint to assert two additional causes of action, and to add three class representatives - Juan Flores Larios, Ramiro Cordova, and Daniel Sante. (DE 18-19).

6. The motion to amend was granted by Judge Spatt on March 5, 2014 (DE 67) and the amended complaint was filed on March 12, 2014. (DE 70).

7. The amended complaint asserted causes of action as follows:

- a. untimely payment of overtime wages under the FLSA;
- b. unpaid overtime under the FLSA;
- c. unpaid overtime under the NYLL;
- d. untimely payment of wages under NYLL § 191;
- e. spread of hours pay under the miscellaneous wage order;
- f. statutory damages for failure to issue wage notices under NYLL § 195(1); and \
- g. breach of contract for failure to pay all straight wages earned under the New York common law.

(See DE 70). A copy of the operative pleading is annexed hereto as Exhibit 1.

8. On September 16, 2013, the Plaintiffs filed a letter motion for conditional certification and court-authorized notice to the FLSA collective. DE 22 and DE 24 (Sept. 19, 2013).

9. On November 13, 2013, the Honorable William D. Wall, USMJ granted plaintiff's motion for FLSA conditional certification, and directed the parties to meet and confer with regard to the content of the proposed notice (DE 38).

10. Prior to the mailing of the collective action notice, 16 individuals filed consents to join the collective action. (DE 46-61; 72-74). Following the posting and mailing of notices, an

additional 57 consent forms were filed. (DE 101-113, 115-153, 155-159).

11. On July 20, 2015, Plaintiffs filed a motion for Rule 23 Class Certification. (DE 170-172). Defendants opposed the motion and cross-moved to decertify the FLSA collective action. (DE 174-176).

12. By Order dated January 15, 2016, Judge Spatt denied Plaintiff's motion for class certification with respect to the third, fourth, and seventh causes of action, and certified a class solely with respect to the fifth cause of action for spread of hours pay. (DE 189, *Mendez v. U.S. Nonwovens Corp.*, 314 F.R.D. 30, 35 (E.D.N.Y. 2016)).

13. On March 31, 2016, Judge Steven I. Locke, USMJ, granted Defendants' motion to decertify the FLSA collective action. (DE 192). Thus, as of this time, the only remaining claims in this case were: (i) counts 1, 2, 3, 4, 6 and 7 on behalf of the named Plaintiffs only, and (ii) count 5 on behalf of the named Plaintiffs and the Rule 23 class.

14. Following the completion of discovery, the parties selected a mediator from the EDNY panel – Patrick M. McKenna. See docket entry dated February 12, 2018.

15. Before the mediation, Class counsel performed detailed computation of damages for the spread-of-hours class which was certified by Judge Spatt on January 15, 2016. Plaintiffs estimated that the amount owed on a class wide basis was \$1.25 Million.

16. On February 16, 2018, the parties participated in an all-day mediation session with Mr. McKenna, as a result of which the parties reached a proposed class action settlement to resolve all outstanding claims.

17. Following the settlement, Plaintiff's counsel was unable to locate all of the class representatives to obtain signatures. After investigation, Plaintiff's counsel was able to locate all class representatives with the exception of Daniel Sante.

18. In November 2019, Plaintiffs' counsel filed a motion to withdraw as to Daniel Sante. (DE 252-253). The motion was granted on January 27, 2020 and any and all individual claims brought by Plaintiff Sante were dismissed with prejudice.

19. A copy of the Settlement Agreement is annexed hereto as Exhibit 2.

20. The proposed settlement calls for the payment of a maximum amount of \$1,200,000.00.

21. The amount payable to the class from the settlement is \$800,000.00, less service awards, administration fees payable to the class action administrator, and costs of the action.

22. The amount payable as attorneys' fees under the agreement is a maximum of \$400,000.00. Attorneys fees not approved by the court will revert to the Defendants.


23. A copy of the proposed class notice is annexed hereto as Exhibit 3.

24. A copy of the proposed class notice in Spanish is annexed hereto as Exhibit 4.

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I declare under penalty of perjury, under 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated: Huntington, New York
August 18, 2020


Steven J. Moser